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City of Eagle
P. O. Box 1520
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VIA U. S. Mail and Electronic Mail:

SRidgeway@CityofEagle.org

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RE: Eagle Water Company, Inc.'s Response to City's "Notice of Default"

Mayor Stan Ridgeway and Eagle City Council:

This letter is sent in response to the City of Eagle's "Notice of Default" sent to Eagle Water Company, Inc. ("Eagle Water") on or about January 14, 2019.

Eagle Water unequivocally disagrees with the City's conclusion that Eagle Water's agreement to sell its assets to H2O Eagle Acquisition, LLC ("H2O") constitutes a "triggering event" under Section 6 of the Intertie Agreement entered into by Eagle Water and the City of Eagle in 2008.

As the City of Eagle is well aware, and as its agents have publicly acknowledged, the City of Eagle was given the opportunity to purchase Eagle Water in late 2014, continuing into 2015. After researching the cost of such a purchase and the related costs to conduct a revenue bond election and integrate the two systems, which costs would be borne by the City's water customers, the City declined to move forward with the transaction.

The City was informed at the time of its discussions with Eagle Water in 2014-2015 that, if it chose not to move forward at that time with a purchase of Eagle Water, H2O would be

purchasing Eagle Water. Thus, the City declined to proceed with purchasing Eagle Water with full knowledge of Eagle Water's intent to sell its assets to H2O if the City didn't agree to move forward with the purchase opportunity.

According to a blog posted on the City's website by Mayor Ridgeway, dated December 21, 2018, the Mayor was contacted by Mr. DeShazo in early 2016 with yet another opportunity to purchase Eagle Water Company. But, once again, the City declined to pursue the opportunity. <https://www.cityofeagle.org/Blog.aspx?IID=1#item>

As the Mayor publicly acknowledged at the January 22, 2019 City Council meeting, in the Fall of 2017, the City entered into discussions with N. L. Bangle, representing H2O Solutions, LLC and H2O Eagle Acquisition, LLC, regarding H2O's purchase of Eagle Water. In furtherance of those discussions, the City toured Eagle Water's facilities and met with Staff at the Idaho Public Utilities Commission in 2018. In addition, the Mayor stated that he sought and received City Council approval to sign a "non-disclosure agreement" with H2O regarding the City's proposed purchase of wholesale water from H2O once the sale of Eagle Water to H2O was finalized. In keeping with the City's by now well-established pattern of delay, Mr. Ridgeway did not get around to signing the non-disclosure agreement until January of 2018.

For the City to now represent to its citizens, the public at large, and to the Idaho Public Utilities Commission that the first it knew of H2O's purchase of Eagle Water was when it read of Suez Water Idaho, Inc.'s purchase of Eagle Water from H2O in the Idaho Statesman in November of 2018, is disingenuous at best and a willful lie at worst.

Eagle Water justifiably relied on the City's decision in 2015 not to purchase Eagle Water Company. The City cannot simply sit on whatever rights it claims it may have and then, when an opportunity it repeatedly passed up is seized by another, claim with any degree of credibility that it could've/would've when, in truth, it simply should've. The doctrines of waiver, laches, and estoppel would all bar such an eleventh hour claim of an alleged right of first refusal.


Further, to be clear, Eagle Water denies that there is any enforceable contract right of first refusal on the part of the City, for reasons including but not limited to the Idaho Statute of Frauds requirement that any contract to transfer real property must have all the particulars - including a sufficient description of the real property to be transferred - to be reduced to writing.

If the City persists in this regard, it can be assured that Eagle Water will not only aggressively defend the sale of its assets to H2O, but it will pursue appropriate tort claims against the City for interfering with the subject sale.

This letter is without prejudice to, nor does it constitute an election or waiver of, nor raise an estoppel against, any and all remedies and rights of Eagle Water at law or in equity or under any agreement (if any, in fact, exists) of the parties. Among the specific reservations by Eagle Water is that no admission whatsoever is hereby made of the existence of any right

of first refusal. Eagle Water specifically denies that any such enforceable right currently exists or has existed in the past.

Sincerely,



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On behalf of Eagle Water Company, Inc.

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